

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

07-1334(PG)

United States District Court	District
Name (under which you were convicted): <b>Hector Jimenez Torres</b>	Docket or Case No.: <b>00-CR-098-04 (PS)</b>
Place of Confinement: <b>U.S. Penitentiary Allenwood</b>	Prisoner No.: <b>23133-038</b>
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) <b>Hector Jimenez Torres</b>
v.	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the District of Puerto Rico
- (b) Criminal docket or case number (if you know): 00-CR-098-04 (PS)
2. (a) Date of the judgment of conviction (if you know): August 6, 2002
- (b) Date of sentencing: 12/18/2002
3. Length of sentence: 20 Yrs Count One; Life as to Count Two
4. Nature of crime (all counts): Interference with commerce by threats or violence  
Violent Crime where death occurs 18 U.S.C. §§ 1951 924(j) and 2
5. (a) What was your plea? (Check one)
 

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? None

N/A
6. If you went to trial, what kind of trial did you have? (Check one)      Jury       Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No
8. Did you appeal from the judgment of conviction? Yes  No
9. If you did appeal, answer the following:
- (a) Name of court: United States Court of Appeals for the First Circuit
- (b) Docket or case number (if you know): 03-1138
- (c) Result: Affirmed/Denied
- (d) Date of result (if you know): unknown
- (e) Citation to the case (if you know): 435 F.3d 3 (2006)
- (f) Grounds raised: Whether Burglary of private home of a homeowner engaged in interstate business is sufficient to create a federal crime. Whether life imprisonment under 18 U.S.C. § 924(j) was improper under the facts of the case when there are three statutes charged in Count Two, two of which offered two different sentencing schemes and there is no jury indication that their conviction relied on the aggravated statute; Whether the Court erred in curtailing appellants cross examination; whether the sentencing Court impermissibly delegated authority to the Probation Officer.
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

N/A

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_ *N/A*

(5) Grounds raised: \_\_\_\_\_ *N/A*

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: \_\_\_\_\_ *N/A*

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_ *None*

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: \_\_\_\_\_ *N/A*

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Lack of jurisdiction

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
Evidence presented at trial differed of that charged in the indictment.

Movant has prepared a proper motion and memorandum of law, however, the Special Investigative Unit has confiscated his motion and memorandum of law and is being held pending investigation and conclusion, movant thus reserves the right to submit those pleadings when returned.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  & No

(2) If you did not raise this issue in your direct appeal, explain why: Counsel did raise a claim, however, not under the same challenge or issue

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state: \_\_\_\_\_

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

**GROUND TWO: Lack of Subject matter jurisdiction**

See U.S. v. Jimenez-Torres, at 13, Torruella, Cir. Judge

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Honorable Torruella's seperate writing, is movant's claim

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

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(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

**GROUND THREE: Ineffective assistance of counsel**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Failure to present the aforereferenced claims on direct appeal as subject matter jurisdiction. And failed to advise movant of his right to to present the claims on address before the Supreme Court under the pertinent rules. The record support the claim

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective assistance of counsel for failing to raise on direct appeal

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

**GROUND FOUR: Insufficiency of the evidence to sustain conviction**

as to both counts in the indictment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See U.S. v. Jimenez Torres, 435 F.3d at 13 Torruella's seperate writing as supporting facts

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: Because of ineffective assistance of counsel. See Jimenez Torres, Id. at 13-15.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Ineffective assistance of counsel

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13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: none of the grounds have been presented in a court due to ineffective assistance of counsel

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes  No   
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: John Ward Llambias

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(b) At arraignment and plea: John Ward Llambias

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(c) At trial: John Ward Llambias P.O. Box 6221 Loiza Station San Juan PR 00914

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(d) At sentencing: John Ward Llambias

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(e) On appeal: Marlene Aponte-Cabrera, Aponte Cabrera Law Offices MSC 128,  
Sierra Morena 271 Las Cumbres San Juan, PR 00926

(f) In any post-conviction proceeding: None

(g) On appeal from any ruling against you in a post-conviction proceeding: None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: None

(c) Give the length of the other sentence:   

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\* This motion may be one day over the one year limitation period. however, under the mail box rule. Movant would note that the reason the instant motion may be late by a day or days is that his timely prepared motion and memorandum of law was confiscated by the Special Investigations Staff Unit at the Institution, in that it was found in the possession of a legal clerk in the law library who the SIS placed in the segregation housing Unit under investigation for an alleged infraction of Institutional rules or regulations, which have nothing to do with movant's motion or legal documents, however, movant was advised and informed that he will not be getting his appeal papers until completion of their investigation. Thus, there is created a government impediment in the filing of his § 2255 motion.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: vacation of the sentence and conviction.

or any other relief to which movant may be entitled.



Signature of Attorney (if any)

Movant pro se 23133-038

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 4/  
9/2007 (month, date, year).

Executed (signed) on 4/9/2007 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

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#### IN FORMA PAUPERIS DECLARATION

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[Insert appropriate court]

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## CERTIFICATE OF SERVICE

I, Hector Jimenez Torres, hereby certify that I have served a true and correct copy of the foregoing:

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston vs. Lack, 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and/or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to:

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 4-9 day of 2007,

Respectfully Submitted,

Hector Jimenez Torres

REG. NO. 23133-038